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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/944,612	09/04/2001	Ronald J. Boscr		1322

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08/24/2007

EXAMINER

HALE, GLORIA M

ART UNIT	PAPER NUMBER
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3765

MAIL DATE	DELIVERY MODE
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08/24/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.



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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/944,612
Filing Date: September 04, 2001
Appellant(s): BOSER, RONALD J.

**MAILED
AUG 24 2007
GROUP 3700**

Myron Amer, P.C.
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 5-27-05 appealing from the Office action mailed 5-18-2005.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

2,613,365	Fairbanks et al	10-1952
JP 08158111	Shimizu	6-1996

Gershman, M.D., Maurice; "Self-Adhering Nylon Tapes" Journal of the American Medical Association, Vol. 68, No. 7, page 951; October 18, 1958.

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 1 contains the trademark/trade name VELCRO. Where a trademark or trade name is used in a claim as a limitation to identify or describe a particular material or product, the claim does not comply with the requirements of 35 U.S.C. 112, second paragraph. See *Ex parte Simpson*, 218 USPQ 1020 (Bd. App. 1982). The claim scope is uncertain since the trademark or trade name cannot be used properly to identify any particular material or product. A trademark or trade name is used to identify a source of goods, and not the goods themselves. Thus, a trademark or trade name does not identify or describe the goods associated with the trademark or trade name. In the present case, the trademark/trade name is used to identify/describe a hook and loop fastener component and, accordingly, the identification/description is indefinite. The tradename VELCRO must be removed from the claim. Only the generic terminology should be used in the claim. Additionally, due to the proprietary nature of the

tradename VELCRO and past complaints by the owner thereof, the use in claims should also be avoided.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over Fairbanks et al (US 2,613,365) in view of the Gershman article "Self-Adhering Nylon Tapes" and Shimizu (JP 08158111).

Fairbanks discloses a brassiere (10) which includes a first construction wherein the bra (10) is worn with a sheath (25) and underwire (30) or a second construction without the sheath (25) and underwire (30). Additionally, the bra can be worn with the sheath attached thereto and with the under wire (30) removed from the sheath (25) which can be considered to be a "third" construction. The bra of Fairbanks et al includes a bra (10) with breast cup pockets (12,13) with a tape (20) as seen in figure 4, sewn under each breast along each breast cup edge and therefore permanently adhered to a part of the bra. The tape (20) further includes female snap fasteners (21) therein, which forms the first construction of the bra (10) which is worn without the sheath (25) and under wire (30). Fairbanks et al also discloses the bra (10) to be worn in the second construction including a sheath (25) with an underwire (20) therein which is U-shaped for each cup as seen in figures 1,2 and 5. The sheath 25 is formed of two

strips of material (27,28) one of which (28) is a plush material that faces the inside of the garment to provide a cushioning effect to the female wearer's skin. The sheath (25) also includes male snap fastener components (26) which correspond to the female fastener components (21) for fastening the sheath (25) with the under wire (30) therein to the bra tape (20) along its entire length. (See Fairbanks et al., col. 3, lines 21-70). However, Fairbanks et al does not specifically disclose the use of VELCRO hook-type and VELCRO loop type fastener components to attach an under wire/sheath to the bra. The Gershman article discloses the common knowledge that it is well known to substitute different types of fasteners such as snaps with male and female snap components, buttons and buttonholes and hooks and eyes etc. with VELCO hook and loop fasteners for greater ease in fastening and unfastening and to achieve other known benefits of the VELCRO hook and loop material such as its fabric conformity to the contours of the wearer when in use in garment construction, comfort to the wearer and aesthetic values. This use of hook and loop tapes is also seen in Shimizu which discloses the use of a hook tape 2b, an under wire (4) and a bra cup (2) and a loop tape (1b) on the surface facing the wearer on the cup frame of the bra in order to attach the under wire cup to the frame of the bra as applicant's. Accordingly, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the bra of Fairbanks et al to substitute the male (26) and female (21) snap fastener components with male (hook) and female (loop) fastener components of VELCRO or any other hook and loop brand material wherein a male snap component is substituted with a male hook material and a female snap component is substituted with

a female (loop) material since such substitution is well known in garment manufacturing as disclosed by Gershman in order to provide greater ease in fastening and unfastening a garment; comfort to the wearer since VELCRO material hook and loop components bend to the contours of the wearer and also for aesthetic values in garment construction. Such a substitution is obvious with the common knowledge of fastener substitution as described by Gershman. By using the loop material which is a female component in place of female snap fastener component (21), the loop material will face the skin of the wearer and its plush material surface is similar to the "plush" material in Fairbanks et al sued to construct the tape (28) which faces the wearer as discussed above in col. 3, lines 49-53 of Fairbanks et al and as claimed in lines 13-15 of claim 1 of the present application. The bra of Fairbanks et al is wearable with the tape (20) which is sewn to and permanently attached to the bra body (11) which would be the first construction. Lines 3-8 of column 1 of Fairbanks et al states that the wire frames (30) and sheath (25) can be removed for "cleaning and other purposes" wherein many wearer's of brassiere would consider "other purposes" to include "Comfort" and to remove "ill-fitting underwire" such as indicated in lines 9-20 of col. 1, Therefore, if the under wire is not comfortable to the wearer the sheath (25) with the under wire (30) therein can be un-snapped from the bra and the bra can remain on the wearer. Additionally, the bra can be laundered in a machine and the sheath and underwire can be washed by hand more delicately to avoid damage to the bra, underwire and the sheath. The removal of the sheath (25) with the under wire by unsnapping is easier than removing the wire (30) from the sheath (25). To remove the sheath the sheath

only needs to be pulled on to unsnap the snaps. In order to remove the under wire the tiny undesired needs to be grasps from inside of the sheet or the sheath pushed in a shirring manner about the undewire to push and pull it out form the sheath.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Shimizu (JP 08158111-with English translation).

Shimizu discloses a first and second construction for right and left breast cup supports for a brassiere attached in supporting relation respectively in surrounding relation about a bottom of a cooperating breast cup (1a) using a hook type (2b) and loop-type 1b fasteners with the first and second construction comprising for each breast cup 1a, a U-shape (4) in cup 2 of shape imparting construction material (the under wire) serving as each cup support, a fabric casing (the cup fabric about the under wire as seen in figure 4 – English translation) in covering relation about the U-shape, the hook-type fastener strip attached to the fabric casing (2b) and a loop-type fastener strip (1b) attached in an outwardly facing relation in an operative location in surrounding relation about a bottom of a cooperating breast cup (as seen in figure 2) and an interposed position between the brassiere and the upper torso of the wearer. The strips of hook type 2b and loop type 1b fasteners having operative position in face-to-face

contact with each other incident to providing breast cup support to the wearer of the bra and in the second construction removal of the cup support (2 with the wire 4) which exposes the loop type attached strip (1b) which is nominally felt by the wearer. The removal of the cup with the under wire 4 allows for a selective support to be worn by the wearer. (See Figures 2,4,6 and 8 of the English translation of Shimizu and page 5, paragraph 11 – page 6, paragraph 13; page 10, paragraph 22 and page 12, paragraph 28).

(10) Response to Argument

In response to applicant's arguments on page 3 in regard to Issue A it is the Examiner's position that it is common office practice to reject the use of VELCRO in claims under 25 USC 112, 2nd paragraph as stated in the rejection. Additionally, the owner's of the tradename VELCRO often file written complains about the use of their tradename in patents. The owner's of the tradename VELCRO often complain about the use of their tradename in patents even in combination with generic terminology , capitalization and the registration mark. Therefore, it is preferred that only the generic terminology be used in the claim. The use of the generic terminology in the claim would clearly define applicant's structure without confusion.

In response to applicant's argument in regard to Issue B it is the Examiner's position that the common substitution of the snap components with hook and loop fastener components would allow for a much easier removal or replacement of the

under wire from or on the bra. Additionally, the removal of the under wire by the unsnapping of the under wire sheath is also easier than the pulling of the under wire from the sheath tunnel. As described in the above rejection the mere pulling apart of the snap components to separate the under wire from the bra is much easier than trying to pull the under wire out from the sheath. To pull the under wire out from the sheath one would have to push the sheath away from the under wire and try to grasp the thin under wire from the tunnel of the sheath to remove it. The replacement of the under wire by snapping the sheath covered under wire on to the bra would also be easier than trying to insert the under wire back into the sheath tunnel. Many women, like myself have thrown away bras where the under wire has poked through the sheath fabric and fallen away from the bra in the dryer instead of trying to feed the underwire back into the sheath since such a task can be quite tedious since it can be similar to feeding a draw cord/ drawstring back into a sweatpants waistband tunnel/sheath.

In regard to Applicant's assertion B2 it is the examiner's position that after the invention of hook and loop fastener material such material has been widely known to be used as a substitute of snaps, buttons and zippers. Such a substitution modification would be an obvious improvement over the use of snaps as disclosed by Fairbanks et al. The Gershman article clearly discloses the substitution of buttons and buttonholes, hooks and eyes, snap components and zippers for hook and loop fastener components in order to provide ease in fastening and unfastening as desired. Additionally, this article was previously cited in the previous Examiner's Answer as evidence of the widely held common knowledge of the substitution of components parts that are known

equivalent substitutes. The Board of Patent Appeals then remanded the Examiner's Answer back to the group so that the Gershman article could be incorporated into the rejection as a prior art reference.

In regard to applicant's Issue B, number 2 on page 4 in regard to the two wearing or fashion options, the Fairbanks et al brassiere would provide the same functional use wherein one wearing configuration would be with the under wire and one would be without the under wire. Nothing precludes the wearer from wearing the Fairbanks et al brassiere without the under wire before or after it is laundered. Fairbanks et al discloses the same claimed structure. Applicant has not claimed a method of wearing the brassiere with or without the under wire as he is now arguing. Fashion is inherently being disclosed by Fairbanks et al in addition to the benefits of laundering procedure. The Fairbanks et al brassiere structure inherently provides the stiff under wire attached construction and then a soft no under wire construction. The sheath of Fairbanks et al is unsnapped when the under wire is removed and is also removed. Only the other snap components along the under wire attachment area is present. Substituting the snap fasteners with hook and loop fasteners is well known and such a substitution in Fairbanks et al would make for a more comfortable brassiere wherein the sheath would also be easier to remove than pulling on snaps and then repressing them in place upon re-attachment. The substitution of the snaps with VELCRO hook and loop fasteners is a well known and obvious manufacturing substitution in garment manufacturing and would have been common to one having ordinary skill in the art. One of ordinary skill in the art would also have known to substitute the male hook component of the hook and

loop fastener for the male snap fastener and the female loop fastener of the hook and loop fastener for the female snap fastener component. Shimizu discloses the hook and loop fastener relationship as claimed by applicant.

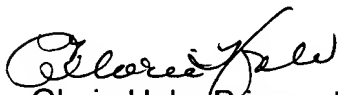
In regard to Issue C, as described on page 6 of Applicant's remarks, it is the Examiner's position that the Shimizu patent discloses the support as the under wire and wherein the casing of Shimizu includes the sheath at the bottom of the cup. The cup is part of the casing. The support is U-shaped as claimed and is the underwire. Applicant's claim has only claimed a fabric casing. A narrow tape like sheath that only encloses about the under wire/support has not been only claimed. The substitute cups is the casing as claimed and it encompasses the u-shaped under wire that is removed when the casing is removed which include the cups 2a. Shimizu discloses the hook and loop fastener configuration as claimed. Shimizu does inherently disclose the removal of the underwire supports since they are within the cup casing/sheath. Therefore the breast cup support placement and replacement with VELCRO hook and loop fastener components is clearly disclosed by Shimizu. Applicant is arguing more than what has been claimed in regard to both of the above stated rejections.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,



Gloria Hale, Primary Patent Examiner- AU 3765

Conferees:



Gary Welch, Supervisory Patent Examiner- AU 3765



Marc Jimenez, TQAS Group 3700